1949.

File No. O. Influx from Pak. | 49.

Legal Department

A **BRANCH**

Subject:—

Opinions under the

Influx from Pakistan (control)

ordinance 1948.

File No. O. Influx from Pak-/49.

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C O N T E N T S.

Legal Department File No. O.Influx from ~~Pak~~ Pak/49

Sr.No.	Compilation No.	Subject	Pages.
		Opinions under the Influx from Pakistan (Control) Ordinance. 1948.	
1.	o.No. 3800 8-4-49	Sections 3 & 7 Procedure for the removal of offenders who have committed offences under Sec. 3.	1 -2
2.	O.No. 6750 17-6-49	Sections 4,5,6 & 7 Code of criminal Procedure, sec. 61 Whether a person who has contravened rule 12 of the Permit System Rules and become liable to prosecution under sec. 5 can be detained by the Police until arrangements are made for his removal.	3 - 6
3.	O.No.10205 9-9-49	------ Do----- Do---- -	7-10
4.	OnNo. 181-Confl 14-12-49	Cases relating to offences under the Influx from Pakistan (Control) Act, 1949.	11 - 20

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K.S.R.
20/7

Influx from Pakistan (Control) Ordinance, 1948.

Sec. 7.

Office of the R.L.A.

In this case the Commissioner of Police wants to know that the procedure for the removal of offenders who have committed offences under Ordinance No. XXXIV of 1948. Now, section 7 of this Ordinance enacts that after the Central Government has directed by general or special order the removal from India of any person who has committed or against whom a reasonable suspicion exists that he has committed an offence under this Ordinance, any officer of Government shall have all reasobale powers necessary to enforce such direction, that is to say, direction of the removal of the offender. By their notification No. II (55-E)-49 N. & I. dated 8th February 1949, the Central Government have directed the removal from India of every person (a) who has entered India from West Pakistan in contravention of section 3 of this Ordinance, or (b) who having lawfully entered India contravenes the provisions of any rule made under section 4 or commits a breach of any of the conditions of his permit, or (c) who has obtained his permit on the strength of a statement made by him which is false etc. Section 2(b) of the Ordinance defines "officer of Government" as "any officer of the Central Government or of a Provincial Government ... .". Under the circumstances, the Commissioner of Police being an officer of the Provincial Government, it would be competent to him to exercise all reasonable powers necessary to enforce the removal of the offenders. No procedure as such is laid down how that removal is to be effected. But the words "all reasonable powers necessary to enforce such direction" appearing in section 7 have to be given their natural meaning, and in exercise of his

in the exercise of his powers under this section, the Commissioner of Police or the officer concerned would be justified in using all means, including x minimum physical force, necessary to effect the removal of the offender from the Dominion of India.

o/c P.M.L.
Remembrancer of Legal Affairs.
R.U.R. to the Passport Office, No. 3800
dated the 8th April 1949.

C.G.R. 12-7
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Office of the R.L.A.

The question referred to the R.L.A. for advice is whether a person who has contravened rule 12 of the Permit System Rules byoverstaying the period prescribed on his permit and has, therefore, become liable to prosecution under section 5 of the Influx from Pakistan (Control) Ordinance, 1948 (XXXIV of 1948), can be detained by the police until arrangements are made for his removal in accordance with the orders issued under Government of India Notification No. II (55-E) 49-N & I, dated 8.2-1949.

2. No doubt section 7 authorises any officer of Government to exercise all reasonable powers necessary to enforce the diection of removal from Indian of a person who has committed or against whom a reasonable suspicion exists that he has committed an offence under the Ordinance; and such direction is without prejudice to the provisions contained insection 5, which prescribes punishment for the offence. Section 6 deals with the powers of arresting a person who has committed or against who a reasonable suspicion exists that he has committed an offence under the Ordinance, and it is made clear in that section that he cannot be detained beyond a statutory period of 24 hours. In other words, if a person is to be prosecuted for the offence, he cannot be detained beyond that period and has tobe produced before the Magistrate. A person whose removal has to be directed under section 7 is also liable to arrest under section 6. It would, therefore, seem that the intention was that such person should not be detained for a longer period than what is

longer a period than what is warranted by section 61 of the Code of Criminal Procedure. Detention is a serious matter, and as a rule power forthe purpose of detention should be exressly given and and would not be impliedly inferred. Therefore, courts would naturally be disinclined to hold that the expression "all reasonable powers necessary to enforce such direction" occurring in section 7 also includes a power to detain a person pending his removal, particularly when they find that in respect of the same person the usual restriction on detention is specially provided for in sub-section (2) of section 6. Provisions similar to section 9 also occur in section 5 of the Indian Passport Act, 1920 (XXXIV of 1920), and I am given to understand that in practice detention is not resorted to as a preliminary step towards removal.

3. In this state of law, I would suggest that if powers of detention are needed for enforcing the direction of removal, they might be obtained by framing a rule for that purpose under clause (d) of section 4 of the Ordinance.

o/c Sd/-P.M.L.

Remembrancer of Legal Affairs.

U R. to P.O. No. 6750 dated 17th June 1949.

C. G.G.R. 12-7

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L.D.R.I.No.12339 dt. 11-8-49.

Submitted:-

In his opinion No.6750 dt. 17-6-49, R.L.A. advised that if powers of detention are needed for enforcing the direction of removal they might be obtained by framing a rule for that purpose under cl. (d) of sec. 4 of the Ordinance. In this same opinion he opined that :-

" Courts would naturally be disinclined to hold that the expression " all reasonable powers necessary to enforce such direction" occurring in section 7 also includes a power to detain a person pending his removal, particularly when they find that in respect of the same person the usual restriction on detention is specially provided for in sub-section (2) of section 6."

The Govt. of India are however of the opinion that "Reasonable Powers" referred to in sec. 7 of the said Act include <u>some</u> powers of detention. There being a general direction to remove from India every person who has entered from West Pakistan without a valid permit, an officer of Govt. (particularly if authorized to do so) would be within the powers conferred by sect. 7 of the Act if he were to take into sustody a convicted offender immediately upon his release, from jail, detainxx him in a proper place until the arrangements for transport ect. are complete and then in due course remove him over the border into Pakistan. So long as the period of detention xf is not prolonged beond the necessities of the case, the Govt. of India feel that it would be regreded as justifiable and legal by a Court. Accordingly, it does not appear necessary to take powers separately as proposed by Govt. of Bombay. (See.

(See. Govt. of India, Ministry of Rehabilitation,
Letter No.III/PMT/4/N/49 dt. 29-7-49).

Detention of Offenders pending their removal to Pakistan.

Office of the R.L.A.

The Remembrancer of Legal Affairs is unable to share the ~~xem~~ view taken by the Government of India and therefore, adheres to the view expressed in his opinion No. 6750, dated ~~the~~ the 17th June 1949.

o/c P.M.L.

Remembracer of Legal Affairs.

U.R. to P.& S.D. (P.O.) No. 10205 dated the 9th September 1949.

C.G.R. 12-7

No.181 Confl.
Office of the
Remembrancer of legal Affairs,
Bombay Castle (Bombay 1), 14th December 1949.

To

The District Government Pleader,
Godhara.

subject.- Cases relating to offences under the Influx from Pakistan (Control) Act, 1949.

Sir,

With reference to your letter dated 11th November 1949 on the above subject, I am sending herewith my opinion recorded in the matter.

Yours faithfully,

s/c Sd/-

Remembrancer of Legal Affairs.

C,G.R. 12-7

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Office of the R.L.A.

The cases pending with the Resident First Class Magistrate at Godhara fall into three groups. Group I where the accused are alleged to have entered India from Pakistan with forged permits; Group II where the accused have entered India from Pakistan without any permits; and Group III where the accused have entered India from Pakistan with valid permits but the permanent addresses stated therin are ~~x~~ false. The question raised for R.L.A's consideration is whether the Resident First Class Magistrate at Godhra has jurisdiction to try all or any of these cases pending with him .

2. Group I. The Entry into India from Pakistan without a permit is an offence punishable under section 5 of the Influx from Pakistan (Control) Act, 1949. Section 6, sub-section (2), of that Act provides that every officer making an arrest under this section shall, without unnecessary delay, take or send the person arrested before a Magistrate having jurisdiction in the case or to the officer in charge of the nearest ~~xxx~~ police station, and the provisions of section 61 of the Code of Criminal Procedure, 1898 (V of 1898) or of the corresponding law for the time being in force the acceding State shall, so far as they may be applicable, apply in the case of any such arrest. The Act does not provide for the trial of the person who contravenes the provisions therefo at the place where he is found. Section 5, sub-section (2) , of the Criminal Procedure Code provides that all offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions but subject to

subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing withsuch offences. In the absence of any specific provision as stated above in respect of jurisdiction to try the offences under the Influx from Pakistan (Control) Act, the provisions of the Criminal Procedure Code will apply. The fundamental principle that the proper venue for the trial of a cirme is the area of jurisdiction in which on the evidence the facts occurred which are alleged to constitute the crime, is contained in section 177 of the Criminal Procedure Code, which provides that every offence shall ordinarily be inquired into & and tried by a Court within the local limits of whose jurisdiction it was committed. The offence in this case consists of the act of entry into India, and ordinarily that offence can be said tohave been committed when the person crosses the frontier and comes into or lands upon the Indian territory. A reference may usefully be made to the decision of R. V. Goldie, Ex parte Picklum, 1937, 59 Commonwealth Law Reports p. 254. That was a case under the Immigration Act, 1901-1935, section 7 of which uses in contra-distinction the words "entering" and "found" within the Commonw alth. Construing these expressions Starke J made the following observations :

" 'Entering or found within the Common wealth' are the words of the section, and they do not mean the same thing. 'Entering ..... the Commonwealth is the act of passing into its territory, whilst 'found within the Commonwealth' means actual presence in the Commonwealth, which is estabi shed by the discovery or detection

of the person within the territory wherever he may be and however remote the time may be from the time of his entry."

The Influx from Pakistan (Control) Act has merely copied the provisions of the Indian Passport Act, 1920, and the rules made thereunder and has made no provision for trying a person who is found in the Indian territory after having entered it. Since the entry into India in this case has taken place outside the jurisdiction of the Resident First Class Magistrate, Godhra, that Magistrate will gave no jurisdiction to try the offence of entry into India without a valid permit. The proper course would be to remit the accused for trial at the place where the entry was effected.

If, however, the accused have forged the permits, it may be possible to try them for the offence under section 471 of the Indian Penal Code. Under rule 7 of the Permit System Rules, 1949, ~~xxx~~ every permit holder other than that of a permit for permanent resettlement shall produce whenever required for the purpose of check both the permit and the indentity certificate or certificates or passport mentioned in the permit. If the accused have produced the permits in Godhara for purposes of checking, they can be said to have fraudulently or dishonestly used a forged document as genuine and would become liable under section 471 for trial at Godhra.

3. Group II. These persons have entered India without valid permits. As stated above, the Resident First Class Magistrate at Godhra has no jurisdiction at all to try these persons since they entered India ~~xxx~~ elsewhere beyond the

the jurisdiction of this Magistrate . These persons will have either tobe sent for trial to the proper Magistrate or their certificates may be cancelled under rule 29 whereupon they would be liable tobe removed out of India.

4. Group III. These accused have entered India with valid permits; but intheir applications for such permits it appears that permanent addresses were falsely state. Under section 5(2) of the Influx from Pakistan (Control) Act, the furnishing of any false informationin pursuance of any of the provisions of that Act or any rule made thereunder is made punishable. Under rule 4 of the permit System Rules, an application for a permit shall be submitted to the High Commissioner or the Deputy High Commissioner in the relevant forms specified in Appendix I to the Rules. The false information stated inthe application about the permanent addresses of these accused can thus be said to have been furnished incontraventionof the Rules. The mere fact that this information was supplied at a place outside India would notmake much difference to the liability for trialof the accused at Godhra. It is an established principle of international law that the judicial process of every independent State extends to the punishment ofall offences against the municipal laws of the State by its subjects wheresoever committed, and the offender can be tried at any place where he is found within the State. So long as the accused persons can be said to be subjects of India, i.e. of Indian domicile, it will be feasible to try them at Godhra for the false information which they may have furnished to the High Commissioner or the Deputy High Commissioner for India in Pakistan. (see p.No. 4(c) & 188 cr. P.C.).

The certificate, it is presumed, does xx state that the permit holders must proceed direct to their addresses given in the permits. (See permit form in Appendix III to the Rules). If these persons are found in Godhra, they would be deemed to have committed a breach of the conditions of their permits within the meaning of section 5. They can, therefore, be prosecuted under section 5(1) for having contravened the condition of their permit viz. their failure to proceed to the addresses specified as a condition to the permit.

Sd/- P.M.L.

Remembrancer of Legal Affairs.

C.G.R. 12-7